IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2206 of 2002

to

FIRST APPEAL No 2208 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LILAJI AATAJI

Versus

SPL.LAQ OFFICER

Appearance:

1. First Appeal No. 2206 of 2002

MR AJ PATEL with VD TRIVEDI for Petitioner No. 1-4

MR KT DAVE, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/09/2003

ORAL COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. The original claimants before the Reference Court has preferred these appeals challenging the common judgment and respective awards dated 8th February, 2002 by the Reference Court i.e. Court of the 2nd Extra Assistant Judge and Special Judge (LAQ), District Court, Ahmedabad [Rural] at Navrangpura. Their lands have been acquired by respondent no. 1 under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') for the public purpose, namely construction of Narmada Main Canal of Sardar Sarovar Project. For the purpose of acquisition, respondent no. 1 issued notification u/S. 4 which is dated 13th December, 1985 and notification u/S. 6 issued on 31st March, 1987. After complying with all the required procedure under the Act respondent no. 1 finally fixed the market value of the land acquired under aforesaid notifications at the rate of Rs.4/- per sq. mtr. The lands in acquisition are agricultural lands and they are situated at village Sughad in Taluka Gandhinagar. The details of the block no. and the area of these lands have been stated in para. 2 of the judgment of the Reference Court. The award of respondent no. 1 is dated 21st April, 1989.

1.1. Since the claimants were totally dissatisfied with the award of respondent no. 1, they preferred reference cases before the Court u/s. 18 of the Act. The Reference Court consolidated them and heard them together. The say of the claimants was that they should have been awarded Rs.100/- per sq. mtr. for the acquisition of their lands. The references were resisted by the present respondents by filing written statements at Exhs. 11 and 15 respectively. Respondent no. 1 denied all the averments and contentions raised by the claimant in reference application and prayed for dismissal of the same. He also contended that the amount of compensation awarded to the claimants was just and proper.

1.2. Respondent no. 2, who is the Executive Engineer of Narmada Project (Main Canal) Construction Division No. II, Ahmedabad, has averred that respondent no. 1 has based his award on the awards passed in L.A.Q. Nos. 51/1985, 53/1985 and 55/1985 and fixed the

compensation at the rate of Rs.4/- per sq. mtr. which was absolutely legal and proper since these awards reflected the correct prevailing market price of the lands. He, therefore, averred that the claimants were not entitled to receive any additional compensation and their reference cases were required to be dismissed.

1.3. The Reference Court vide Exh. 13 framed issues for determination.

2. At the trial, the claimants produced documentary evidence as well as led oral evidence. So far respondents are concerned, it appears that no oral evidence was led by them. However, they have produced certain documentary evidence in the form of extracts of the revenue records, awards made in other similar cases, etc. The Reference Court after appreciating the submissions on record, came to the conclusion that the claimants are entitled to receive additional amount of Rs.48/= per sq. mtr. against their claim of Rs.100/- per sq. mtr. Thus, in the opinion of the Reference Court, a sum of Rs.52/= per sq. mtr. could be the market value, which could be paid to the claimants.

2.1. The appellants i.e. the original claimants have now approached this Court to seek additional compensation for the acquisition of their agricultural lands. According to Mr. Patel, learned advocate for the appellants, in these appeals the lands other than lands in question of Sughad village were the subject matter of appeal being First Appeal No. 6228 of 1999 and its cognate matters and the Division Bench comprising Hon'ble Mr. Justice J.M. Panchal and Hon'ble Mr. Justice Sharad D. Dave fixed the market value at Rs.53/= per sq. mtr. vide judgment dated 24/7/2003 so far those lands were concerned. Mr. Patel has placed extensive reliance on the aforesaid judgment of this Court. He has further submitted that the lands in that case and in the case before us are of village Sughad and the notifications issued by respondent no. 1 under sections 4 and 6 of the Act, are also of the same time. In that view of the matter, according to Mr. Patel, judgment of the Division Bench in aforesaid First Appeals would be very relevant and would be guiding factor to decide the market value of the land in question in this case. He has further submitted that there is ample evidence on record to establish that the market value decided by the Reference Court was inadequate and it was required to be increased.

2.2. As against that, Mr. K.T. Dave, Ld.

AGP for respondents has submitted that the value fixed by the Reference Court was just and proper and no interference was at all required by this Court. According to him, the Reference Court has adequately considered all the relevant aspects in determining the market value and has come to the aforesaid conclusion.

2.3. The Reference Court while determining the market value of the lands in question mainly took into consideration the documentary evidence on record and after discussing the oral as well as documentary evidence came to the conclusion regarding the additional amount which could be given to the claimants against their claim of Rs. 100/= per sq. mtr.

2.4. The Reference Court ultimately held that the claimants were entitled to have additional amount of Rs.48/= per sq. mtr. together with incidental benefits.

3. The claimants have now approached this Court under section 54 of the Act by filing these appeals before this Court making a grievance that the Reference Court ought to have relied on the judgment delivered by Division Bench of this Court in First Appeal No. 6228 of 1999 and allied matters.

4. We have carefully considered the material on record including the evidence both oral as well as documentary and rival submissions. It may be noted here that in support of their case, the claimants have examined Lilaji Ataji Thakor at Exh. 27. He has stated that village Sughad is having considerable development in as much as many facilities are now available at the said village. He has stated that at Sughad village there is fertility. It has got facilities for telephone, electricity, post office, bank, etc. It has also Gram Panchayat, milk society, hospital and high school. This witness has been cross-examined by learned advocate Mr. N.M. Patel for the opponents. Our attention has been specifically drawn to the aforesaid judgment of the Division Bench and in particular the conclusion reached by this Court in the said case wherein it has been held that the just compensation could be Rs.53/= per sq. mtr. As already stated above, from the record of the case as well as said judgment it appears that the market value of the lands at Sughad at the time of issuance of notification was at Rs.53/= /= per sq. mtr. Since the Division Bench of this Court has already taken that view and determined the market value after referring to various case law cited before it, we see no reason to take a different view from it and in our opinion it would

be completely safe to rely on the judgment of the Division Bench dated 24th July, 2003 delivered in First Appeal No. 6228 of 1999 and its cognate matters and to hold that the claimants are entitled to receive inall amount of Rs.53/= per sq. mtr. in place of Rs.52/= per sq. mtr.

4.1. Further the perusal of the Reference Court's judgment shows that there is some direction with regard to payment of interest on solatium has not been specifically incorporated. The Division Bench of this Court has discussed this aspect in detail in para. 12 of its judgment, which can be reproduced as under :-

> "12. Further, Mr. A.J. Patel, learned counsel of the claimants has argued that in view of the decisions of the Supreme Court in (i) Sunder v. Union of India, 2001 (3) G.L.H. 446; and (ii) Nagpur Improvement Trust v. Vasant Rao & ors., 2003 (1) G.L.H. 140, the claimants would be entitled to interest on the amount which is awardable under Section 23(1-A) and 23(2) of the Act and, therefore, necessary directions should be given in this regard. Having regard to the principles laid down by the Supreme Court in abovereferred two decisions, this Court is of the opinion that necessary directions will have to be given to the respondents to pay interest on the amount which may be awarded to the claimants under Section 23 (1-A) and 23(2) of the Act."

Thus, the respondents shall pay to the appellants interest as per section 28 on the amount which may be found payable under Section 23(1-A) and 23(2) of the Act.

5. These appeals are, therefore, partly allowed to the extent indicated hereinabove. There shall be no order as to costs. The office is directed to draw the award in terms of this judgment. Security, if any, furnished by the claimants while withdrawing the amount deposited stands discharged. The respondents are directed to deposit the additional amount together with all other benefits and interest within a period of 8 weeks from the date of receipt of writ of the order.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

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